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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report on the human rights situation in Burundi submitted by the Special Rapporteur, Mrs. Marie-Thérèse A. Keita Bocoum, in accordance with Commission resolution 2001/21

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Summary

The present document is the fifth report submitted by Mrs. Marie-Thérèse A. Keita Bocoum, Special Rapporteur on the human rights situation in Burundi, whose mandate was extended by the Commission on Human Rights in its resolution 2001/21 of 21 April 2001. In accordance with that resolution, the Special Rapporteur submitted an interim report to the General Assembly at its fifty-sixth session (A/56/479) following her fourth mission to Burundi, from 5 to 14 July 2001.

The present report, which covers the period from 1 September to 15 December 2001, relates to the general situation in Burundi, in particular to the questions of human rights and their promotion and the justice system and the rule of law. It is based on the Special Rapporteur's mission to Burundi from 28 November to 14 December 2001.

During that mission, the Special Rapporteur met with the highest-political authorities: the Vice-President; Mr. Sylvestre Ntibantuganya, the former President of the Republic; the former Vice-Presidents; the President of the National Assembly; the members of the new Government; and representatives of political parties and factions of every persuasion. She also had discussions with members of the diplomatic corps, the heads of United Nations system agencies in Burundi and representatives of civil society, in particular representatives of women's and youth associations, human rights associations and religious communities. In addition, she went to the provinces of Ngozi and Rumonge, where she visited the prison, and to the Lukole refugee camp in Tanzania. She also held meetings with the Representative of the Secretary-General for Burundi and with the Special Representative of the Secretary-General for the Great Lakes region.

Based on the information gathered, the Special Rapporteur addresses in Part I of this report the political, economic and social situation, in particular developments in the peace process since the inauguration of the Transitional Government on 1 November 2001.

Part II deals with the human rights situation in Burundi and human rights violations resulting from the armed conflict such as violations of the rights to life, to freedom, security and inviolability of the person, and to freedom of movement and freedom to choose one's residence. It also describes the situation of internally displaced persons and refugees and of the Batwa minority. The Special Rapporteur also discusses violations of freedom of opinion, expression and assembly and of the rights of persons deprived of their liberty, women and children. She then analyses the situation with regard to economic, social and cultural rights and the developments in the sphere of justice and the strengthening of the rule of law and in the promotion of human rights.

Parts III and IV contain the Special Rapporteur's observations and recommendations on the basis of the analysis of these situations.

The Special Rapporteur noted the persistence of a climate of insecurity which is adversely affecting the economy and the social situation of the people of Burundi. On the other hand, the Transitional Government has the advantages of being outward looking and enjoying the support of the international community. The presence of more women within the

Government is welcome and implies a genuine resolve on the Government's part to contribute towards improving the status of women. There have been a number of positive developments in the political situation, but espousal of the peace process by the armed groups clearly remains a prerequisite for an end to the cycle of violence. Uncertainty as to the rebel groups' demands and what they really want seems to be among the major obstacles to the peace process. Moreover, reference to the question of the "genocide" in Burundi was a frequent feature of the discussions that the Special Rapporteur had during her visit. Thanks to the support of the Office of the United Nations High Commissioner for Human Rights in Burundi (OHCHRB) and the efforts of the Government and non-governmental organizations, there are continuing improvements in the application of the Code of Criminal Procedure and in prison conditions. Action by OHCHRB should be strengthened in areas such as monitoring; protection of the rights of refugees and displaced persons and training to promote observance of those rights; support for the peace process and, with particular regard to the commissions established under the Arusha Agreement on Peace and Reconciliation in Burundi of 28 August 2000: awareness-raising with respect to good governance and democracy, and stronger partnership with local and international NGOs.

In addition to the recommendations made in her latest reports (E/CN.4/2000/34, paras. 133 to 167; E/CN.4/2001/44, paras. 154 to 207, and A/56/479, paras. 128 to 157), the Special Rapporteur makes further recommendations to the parties to the conflict, the Burundian authorities and the international community. She commends the mediators on the progress made and urges them to continue their efforts to bring those groups which are still reluctant to the negotiating table so as to achieve a negotiated solution to the conflict. She appeals to the armed groups and the Government to respect human rights and international humanitarian law and to end all violence against civilians. She urges the armed groups and the Government to sit down at the negotiating table and to cease their mutual recrimination. She calls on the Government and the international community to ensure the prompt and effective implementation of the Arusha Agreement and to prepare the way for the return of refugees. She recommends that the Government should cease recruiting militias (*gardiens de la paix*) and abandon the civil self-defence programme. She thanks the international community, and the States of the region in particular, for their untiring support for the facilitation and appeals to donors to continue humanitarian and development assistance and to make every effort to fulfil promptly the undertakings given at the Paris and Geneva conferences of 2000 and 2001 respectively. She invites the international community to increase its support for human rights monitoring and the strengthening of the judicial system and the rule of law and for all the activities relating to the promotion and protection of human rights, which are essential for consolidating peace.

Introduction

1. By its resolution 2001/21, adopted on 20 April 2001, the Commission on Human Rights extended the mandate of the Special Rapporteur on the human rights situation in Burundi and maintained its agenda-specific dimension. The present report, which covers the period 1 September to 15 December 2001, is submitted pursuant to that resolution. It is based on the Special Rapporteur's mission to Burundi from 28 November to 14 December 2001.

2. During her mission, the Special Rapporteur met with Burundi's highest political authorities: Mr. Domitien Ndayizeye, Vice-President; Mr. Sylvestre Ntibantuganya, the former President of the Republic; the former Vice-Presidents; the President of the National Assembly; the members of the new Government, and representatives of political parties and factions of every persuasion. She also had discussions with members of the diplomatic corps, the heads of United Nations system agencies in Burundi and representatives of civil society, in particular representatives of women's and youth associations, human rights associations and religious communities.

3. The Special Rapporteur wishes to thank the Vice-President and all the eminent persons she met for their availability and for their support for the success of her mission. She is deeply grateful to the Tanzanian authorities for their assistance with her visit to the Ngara refugee camps. She also wishes to commend the director and staff of the Office of the High Commissioner for Human Rights for Burundi (OHCHRB) for their contribution to the success of her mission and to assure them of her gratitude for the kindness they showed her throughout her stay.

4. The mission took place a few days after the installation of the Transitional Government but also, paradoxically, at the time of an upsurge in fighting between Government forces and rebels around the capital and in the interior of the country. It also coincided with the convening at Bujumbura of the Arusha Agreement Implementation Monitoring Committee and the start of the work of the independent commission on issues relating to prisoners provided for by the Arusha Agreement. It will be seen, therefore, that the overall situation had changed since the Special Rapporteur's previous visit in July 2001. The Special Rapporteur was able to see for herself the consequences of this for political, economic and social life and, above all, for the human rights situation. In this submission, she reports on this and sets out her observations and recommendations regarding improvement of the human rights situation in Burundi.

I. GENERAL SITUATION

5. In this section, the Special Rapporteur analyses the political situation in Burundi and then turns to the developments in the peace process and to the warfare from which the country has been suffering for a number of years, with a considerable impact on the human rights situation and even on the perception of human rights. The section concludes with an examination of the developments in the economic and social situation.

A. Political situation

6. Since October 2001, violence has increased, particularly in Bujumbura-rural and Bubanza and even in the provinces where there had been a lull. At Kinama, attacks by armed groups, followed by violent reprisals by the army, are a continuing cause of civilian casualties.

7. While not intense, the conflict in Burundi extends throughout the country with the exception of the provinces of Ngozi and Kirundo on the border with Rwanda, which has sealed off its frontier. Since July, violence has increased, especially in the east and north of the country, but also in the southern and south-eastern provinces and the areas around the capital where clashes were already heavy. To this must be added the raids by armed groups and Interhamwe in Cibitoke province in the north of the country, and area that was previously relatively calm that has been affected by insecurity for several years now. Violence continues in the areas of influence of the Forces nationales pour la libération (FNL) - Bujumbura-rural, the Kibira forest, Kayanza and Muramvya - and of the Forces pour la défense de la démocratie (FDD), i.e. the southern provinces of Makamba and Rutana, with a spillover into Ruyigi. The leakiness of borders remains a source of concern, since there is no way of telling who crosses the frontier or how.

8. The violence and, in particular, the army's often disproportionate reaction to it, are still causing population movements, particularly in the province of Bujumbura-rural. Given all these events, the country is more at war than at peace. The clashes between the army and the armed groups are more in the nature of a war on civilians than of a civil war. The prize in this war is the civilian population and it is it which suffers most from the violence. The rebels seek to gain its sympathy, but those who resist are likely to become the victims of reprisals. The army behaves in the same way. The belligerents on all sides take revenge on the population for its silence, neutrality or complicity with the other camp.

9. The period from July to December was also marked by intensified military action by the army and others alike, with frequent use of heavy weapons, for example in the clashes at Tenga north of Bujumbura. With the installation of the new Government in November, the armed groups took a more radical stance and the conflict intensified. There were raids by the groups based in Bujumbura-rural into the capital's northern suburbs, particularly Kamenge, Buterere, Musaga and Gihosha. The army successfully drove armed FDD groups that had attacked the eastern provinces back towards Tanzania and undertook a large-scale operation to drive out the FNL armed groups operating in Bujumbura-rural. The circulation in November of a document signed by the FNL and FDD (Peter Nkurunziza faction) points to the possibility of a change at the head of the FDD or at least of a split in this movement and an alliance between these two armed groups, which are probably the most extreme. It will be recalled that something similar happened within the FNL a few months earlier. The document in question calls, inter alia, for the dismantling of camps, the reinstatement of the Constitution of 13 March 1992 and the release of political prisoners. On 16 October there were reports in the national and international press of serious dissension within the FDD. They claimed that the leader of the internal rebellion, Jean-Bosco Ndayirengurukiye, who had begun negotiations with the Government of Pierre Buyoya, had been dismissed and that a committee headed by

Peter Nkurunziza had taken over the leadership of the FDD or at least control of a large part of the movement. The quarrel is thought to have been instigated by Rajabu Hussein from the northern province of Muyinga, whom some observers described as the real strongman or "man behind the throne".

10. Crime is on the increase. A representative of the World Health Organization (WHO), Professor Leopold Manlan Kassi, was murdered in the second half of November and the case is still under investigation. This odious and deeply shocking crime underlines the need for greater protection of the representatives of the international community. According to the Resident Representative of the United Nations Development Programme (UNDP), additional steps have been taken to that end. The President of the Association Nationale pour la Communication et l'Education aux droits de l'Homme (National Association for Communication and Human Rights Education, ACEDH) reportedly barely escaped an ambush in Bujumbura on 14 November 2001 in which his taxi driver and several other people were killed. The security situation is likely to worsen with the crime wave. There is allegedly much wrongdoing by policemen. The Government says that it is aware of this problem, but intends to deal with it once hostilities have ceased. As the prevailing insecurity has numerous consequences for the human rights situation, the hopes for an improvement in that situation still rest on developments in the peace process.

B. Developments in the peace process

11. The peace process has moved forward somewhat since the Special Rapporteur's mission to Burundi in July 2001. From 3 to 5 September the President of Burundi paid a working visit to Dar es Salaam concerning the resumption of cooperation between Burundi and Tanzania and the inter-Burundian peace process. On 12 September, the Burundi Collective of Women's Associations and NGOs (CAFOB) and the United Nations Development Fund for Women (UNIFEM) jointly organized a day-long workshop on the women-related Protocols to the Arusha Agreement and women's place in the implementation of the Agreement. The 100 women attending also discussed the Agreement's impact on Burundian women's lives.

12. On 1 October, the Sixteenth Summit of the Regional Peace Initiative on Burundi was held at Arusha in the presence of the Facilitator of the Burundi peace negotiations, former President Nelson Mandela. It followed on the meeting held at Nairobi on 20 September 2000 and was intended to take decisions regarding the two rebel movements still refusing to sit down at the negotiating table with the Government. On 3 October, the Arusha Agreement Implementation Monitoring Committee (CSAAP) held a further meeting in Arusha. At issue was the question of the protection unit, to which no solution had been found at the Summit. The meeting ended without agreement on the points of divergence. On 11 October, the Seventeenth Summit of the Regional Peace Initiative on Burundi was held at Pretoria. There was some progress on the Transitional Government and composition of the Cabinet, the National Assembly and the Senate.

13. On 17 October, the Prime Minister of Belgium committed his country to releasing 5.5 million euros to finance the mission of the southern African protection force in Burundi, with a further 24 million euros to follow. South Africa agreed to deploy a protection

unit to Burundi by 1 November, to be joined later by contingents from Ghana, Nigeria and Senegal. The first contingent arrived in Burundi on 27 October 2001, a few days after the formal installation of the Transitional Government. The return of the exiled politicians coincided with the arrival of the South African troops responsible for protecting them. These troops, who are mainly financed by the European Union, are not operating under a United Nations mandate. In addition to protecting G-7 political leaders, the South African soldiers are charged with training a special Burundian protection force that might form the core of the future national army. A peacekeeping force might be established in the future, providing there is an effective ceasefire. The ceremonies for the installation of the Transitional Government were attended by national Presidents from the region and followed by high-level official visits proving the international community's interest in Burundi. The visitors were the Vice-President of the World Bank and the delegation from the European Union that was headed by the Belgian Minister for Foreign Affairs, Mr. Louis Michel, who urged the armed groups to join in the negotiating process.

14. The Transitional Government is made up of the signatories of the Arusha Agreement. The armed groups are not represented at some countries that are politically close to them, such as the National Council for the Defence of Democracy (CNDD) and the Parti de la libération du peuple hutu (PALIPEHUTU), are members. It would seem, however, that the armed groups do not recognize those bodies as their representatives. In a statement issued on 12 November, the delegation of the European Union called for the immediate suspension of hostilities. It promised aid amounting to 65 million euros over three years, including 45 million for roads, 10 million for justice and democratization and 10 million for reform of the army. It looks to the Government of Burundi for greater commitment in the spheres of justice, health and education. For the moment, the Government is devoting half of its budget to the war effort.

15. The independent Commission of Inquiry to investigate the question of political prisoners began work on 28 November 2001. It has received support from OHCHRB and is charged with inquiring urgently into the situation regarding prisoners and making recommendations on (a) prison conditions, treatment of prisoners and the training and terms of employment of prison wardens; (b) the release of prisoners are awaiting trial whose cases have been excessively delayed; (c) the existence of political prisoners and the release of all of them.

16. The CSAAP met at Bujumbura for the first time on 26-28 November 2001. At this, its sixth session, the CSAAP reportedly discussed technical issues relating to its establishment in Bujumbura. Members noted that, progress notwithstanding, some institutioos had not commenced operation as scheduled. They recommended the repeal of laws restricting political freedom and the rapid establishment of the other transitional institutions. On 3 December, the CSAAP requested the Government to create conditions conducive to the implementation of the Arusha Agreement. The nine-member CSAAP Executive Council met for the first time on 6 December 2001 and will monitor the situation from day to day.

17. The fact that the peace process has been repatriated to Burundi is laudable. However, the process remains handicapped by the absence of a ceasefire, which cannot be obtained without the real involvement of the neighbouring countries and countries of the subregion. In that connection it intended to hold a further meeting of the Regional Peace Initiative after that of October 2001. On 7 December, the United Nations Security Council called in its turn for

the rebels to cease hostilities and enter into negotiations with the Transitional Government. On 9 December, the Presidents of Tanzania and Kenya welcomed the establishment of the Transitional Government and called on the Burundian rebels to lay down their arms and resume the peace process as soon as possible.

C. Economic and social situation

18. The continuing conflict is not only causing loss of life but adversely affecting Burundi's economic and social development. The principal challenge facing Burundi is still to stabilize and revive the economy. The magnitude of the task can be judged from the fact that many social indicators are now lower than they were 20 years ago. Per capita gross domestic product, which averaged 240 dollars in the period 1980-1985, is now put at 120 dollars. The foreign debt is in excess of one billion dollars and debt service charges alone represent 124 per cent of the total value of the country's exports of goods and services. In this context, the opportunities for earning even a subsistence income are increasingly rare in both the public and private sectors.

19. The social situation continues to deteriorate, with rises in unemployment, strikes and poverty. The destruction and absence of social infrastructure has had a devastating effect on the provision of social services. The results have been a significant decline in public health and reduced access to drinking water and education. Since 1993, life expectancy at birth has fallen from 53.8 years to 42.8 years and the proportion of the population living below the poverty line has risen from 39 per cent to 58 per cent. The gross primary school enrolment ratio has fallen from 70 per cent in 1992 to 37 per cent.

20. The farming sector employs 90 per cent of the labour force and accounts for 54 per cent of GDP. While the drought in 2000 was followed by good harvests in September and October 2001, that was not enough to restore the economic situation. There has, however, been an improvement in the nutrition situation since May 2001. The humanitarian situation, which is already worrying, is another one that is likely to worsen because of the resumption of hostilities. Because of the insecurity, humanitarian assistance organs do not have access to all parts of the country. After the unprecedented nationwide epidemic in November 2000, the number of cases of malaria has declined steadily, to reach 134,869 in September 2001. The human immunodeficiency virus (HIV) infection rate is rising alarmingly. The country is thought to have over 160,000 AIDS orphans.

21. On 3 September, the Government finalized a national AIDS control strategy; implementing it will cost at least 200 million dollars over the next five years. On 10 September, the National Assembly began the special session to examine the amended national budget bill for 2001. The school year commenced the same year, with problems at Makamba, Karusi and Kirundo. On 13 September 2001, the UNDP Governing Council approved the second cooperation framework with Burundi (2002-2004) for a total amount of 32 million dollars. This arrangement takes account of the Government's priorities, of the need to combat poverty and of good governance. At a meeting of donors to Burundi held at Bujumbura from 10 to 12 October 2001 the promises made at the donors conference held in Paris on 11 and 12 December 2000 were only partly kept. On the other hand, there have been many donors

to the UNDP direct community assistance project, which covers income-generating activities, farming, education, housing and capacity-building. In addition, UNDP has helped the Government to prepare a major initiative for mobilizing resources against HIV/AIDS through the holding at Geneva, on 6 and 7 December 2001, of the Round Table Conference for Burundi (hereinafter the Geneva Conference) as a follow-up to the Paris Conference.

II. HUMAN RIGHTS SITUATION

22. The human rights situation is still marked by the continued fighting between Government forces and armed groups in various provinces. Innocent civilians continue to be the victims of rebel attacks and the reactions of the armed forces, their only choice being to suffer or to flee towards quieter areas. The provinces of Bujumbura-rural, Bururi, Rutana, Makamba, Ruyigi and Muramvya are the most affected. The rights to life, security and physical integrity are those most frequently violated. Numerous reports in October 2001 referred to dozens of civilians falling victim to rebel attacks and reprisals by some elements of the Government armed forces. The rights to personal freedom and physical integrity are constantly being violated, with numerous reported instances of illegal arrests and detention in the *cachets* of the police and gendarmerie or military positions, where torture is still being practiced. The right of freedom of movement and choice of residence is utopic in provinces such as Bujumbura-rural and Bubanza.

A. Civil and political rights

1. Violations of the right to life

(a) Violations attributed to agents of the State

23. According to accounts gathered by OHCDHB after a rebel attack on 4 October in Bujumbura-rural, where eight members of the military were reportedly killed, the military are said to have begun reprisals against the civilian population, killing 12 people, including two school children. On 10 October OHCDHB was informed of the killing of Sergeant Stanislas Ntakarutimana, alias Kiroge. He had reportedly been arrested in June 2001 for banditry and complicity with the rebel forces. After being held in the Bururi prison, he is said to have obtained permission to go home to Mabanda, and had been arrested again and was then executed on the orders of commandant Rusuguro of the Mabanda camp. On 20 October, six civilians were reportedly shot in the mouth and killed by members of the military in Mageyo.

24. The Special Rapporteur was informed of the killing, on 13 October 2001, of Mr. Jean-Marie Vianney Nahyo in Ruyigi province. The victim, aged 21 and originating from the Mugozi region, commune and province of Ruyigi, was apprehended by a member of the military who knew him well. His body was returned to his family only two days later, on 15 October, after a gendarmerie officer from Ruyigi intervened and, proceeded to arrest the suspects. On 25 October 2001, irate members of the military reportedly carried out reprisals near the town of Bubanza, supposedly in response to an ambush the previous day by the rebels, when three members of the military were reportedly killed. During the reprisals, at least 13 civilians are said to have lost their lives. On 30 October 2001, following the death of members of the military killed by rebels in the Muramvya region, Mutimbuzi commune,

Bujumbura-rural province, 12 civilians were reportedly killed by way of reprisals. During this same operation, houses were looted and burned and the number of displaced persons is estimated at about 8,000. On 3 November, Mr. Jacques Hatungimana (aged 21) is said to have been summarily executed by members of the military in Kinama, Bururi district.

25. On 18 November 2001, Mr. Jean-Bosco Hategekimana met his death in the Cibitoke region. He was reportedly killed with a bayonet by gendarmes who are said to have hidden the victim's body and guitar. The Special Rapporteur would like to point out that several crimes of this nature in the Kinama region have not resulted in any judicial proceedings. She hopes that the Government will put an end to such practices, which are contrary to the most basic rules of law, and that justice will be rendered for the sake of all victims without exception. On 20 November 2001, in the Musaga region (Bujumbura) Mr. Corneille Nturikiye, aged 53, paid with his life for having tried to prevent a girl from being raped by a member of the military. On 9 December, a drunken member of the military reportedly fired on people in a café, killing three of them and wounding several others in Giteranyi commune, Muyinga province. On 25 December another member of the military, also in a state of intoxication, reportedly fired on a group of people, killing two and wounding one other.

(b) Violence attributed to armed groups

26. In September 2001, the rebels reportedly killed nine people and wounded five others in Rumonge, in the provinces of Bururi, Bujumbura-rural, Bujumbura-Mairie, Bubanza and Rutana. In October 2001, they reportedly killed 39 people, including four members of the military, and wounded several other people in the same provinces. Most of the civilian victims are said to have been targeted for reprisals because of siding with the military. In November 2001, 46 people were reportedly killed and several others wounded by the rebels in Ruyigi, Muramvya, Bururi and Kayanza. Considerable material damage was reportedly caused as a result of these attacks. On 2 December, rebels are said to have killed three people and wounded several others during an ambush which they had set up in Kanyosha commune, Bujumbura-rural province. On 3 December, they reportedly attacked the Gaseri sector, Rutana commune, killing two people and wounding five others. On 7 and 9 December, they reportedly set up ambushes on national highways 5 and 7, during which seven people are said to have been killed and two others wounded. Between 13 and 19 December, eight people, including a head of region, were reportedly killed during rebel attacks in the provinces of Bubanza, Cibitoke, Bujumbura-rural and Conkuzo. Two people were reportedly wounded and two others abducted during these events.

(c) Violence attributed to persons unknown

27. On 5 September 2001, two severed heads were reportedly found in the area between Ruyaga (Bujumbura-rural) and Kiriri (Bujumbura-Mairie). There was no indication as to who might have perpetrated these atrocities. On 6 September 2001, three people are said to have been killed by men wearing military uniforms in the Gihosha region, and three others were reportedly killed in the Kamenge (Bujumbura-Mairie) region. On 9 October a young boy called Pascal was reportedly killed by two men in the "Le Gentil" psychiatric hospital at

Bujumbura. He is said to have fallen victim to a settling of scores between armed bandits. On 28 October 2001, a domestic servant by the name of Philippe was reportedly beaten to death on the orders of his employer because of the disappearance of an item of clothing which he had been asked to iron. Mr. Isidore Mvuyekure, who had been working as a cook in Ngarara (Bujumbura), reportedly died on 12 December 2001, following ill-treatment which he had suffered at the home of his employer. The latter is said to have been helped by arrangements made to have the victim buried without informing his family of his death, and still less of his burial. The Government Commission on Human Rights (CGDPH) was notified and OHCDHB called for a judicial inquiry into these various cases to be opened and for the presumed culprits to be brought to justice.

2. Violations of the right to personal freedom and security

(a) Violations attributed to agents of the State

28. The situation of persons detained as part of the inquiry into the attempted coup d'état of July was brought to the attention of the Special Rapporteur. On the day after the last attempted coup d'état, on 23 July 2001 and the following days, numerous civilians and members of the military suspected of involvement in the plot were apprehended by the forces of law and order. Having learned that some suspects had been transferred to the Ngozi prison, OHCDHB went to that establishment on 24 September 2001 and held individual interviews with the following detainees: Lieutenant-Colonel Joseph Ndayishimiye; Captain Dieudonné Ndushimagize; Mr. Adolphe Ndayiragije, an Agricultural Engineer and teacher at the Lycée de l'Amitié in Bujumbura; Mr. Jean-Baptiste Nirengutse, dean at the Ngagara Lycée; Mr. Célestin Sibomana, a law student; Lieutenant Rémy Nsengyumva, a second-level polytechnic student; Mr. Athanase Ndizigiye, a student at the Faculty of Agronomic Sciences; Mr. Cassien Ndayiragije, a law student; Mr. Claver Butoyi, a history student; and with Lieutenant Vincent Kamenyero.

29. In the light of the interviews conducted by OHCDHB, a number of conclusions may be drawn:

- The arrests of the two senior officers and of all the civilians are illegal: no warrant is said to have been presented at the time of their arrest.

- Acts of torture and cruel, inhuman and degrading treatment were perpetrated against some detainees, including the civilians and junior officers. These acts are said to have been committed in the presence of senior officers, often with their consent or else by those same officers, and before civil magistrates and members of the commission of inquiry established on this occasion.

- The detention of all the prisoners may be described as illegal: it was not confirmed within 15 days, as required under the Code of Criminal Procedure.

- The arrest warrants for the suspects seem to have been irregular: the date of arrest indicated on the warrant apparently did not correspond to the actual date of arrest.

30. The fact that the accused were detained in Ngozi may be said to be contrary to international standards: the persons should have been detained in a place reasonably close to their usual place of residence, all the more so as the competent courts (War Council and Military Court) are based at Bujumbura. The Special Rapporteur would like to draw the attention of CGDPH to a letter addressed to the Ministers of National Defence and Justice by these 22 persons presumed to have been involved in the attempted coup d'état of April 2001. According to the signatories, who had been arrested between 18 and 21 April, their detention was not confirmed by the judge. Under the Code of Criminal Procedure, the accused must be brought before the judge, for confirmation of the pre-trial detention, within at the latest 15 days from the date of detention ordered by the examining magistrate (art. 72). Yet, the accused have now been detained illegally for several months, and the Special Rapporteur has not been informed of any change in their situation.

31. During her visit to the Bujumbura military hospital, the Special Rapporteur met the commanding officer, Colonel Apollinaire Nadyitwayeko, who introduced himself as the director of the department set up to assist the Ministry of Reintegration of Refugees, Displaced Persons and Repatriates. He was apparently arrested on 6 August 2001 and accused of involvement in the attempted coup d'état of 22 July 2001. He was reportedly transferred to the Ngozi brigade, on 7 August, where he is said to have been tortured before being transferred to the military hospital on 23 August following an illness. He affirms that his detention was never confirmed. The Special Rapporteur was furthermore notified of the case of Captain Dieudonné Dushimagiza. He was arrested as part of the inquiry into the attempted coup d'état of July 2001 and detained at the Ngozi central prison, and suffers from hypertension and gout. His doctor has reportedly asked, to no avail, since 5 September for him to be transferred to the Mpimba central prison where he could be given appropriate medical treatment.

32. The Special Rapporteur was informed that in the Kijugu, Nyakungu and Cufe Bibande *collines* of Songa commune (Bururi), the population was reportedly subjected to exactions by members of the military from the Rumeza position. These people have to go and draw water and cut wood on their own plots. Those refusing are reportedly beaten, often in front of their families. Mr. Frédéric Havyarimana, who was prosecuted for murder, had reportedly been arrested on 9 October 1997 in Rutana. At the time of his arrest, he is said to have been tortured to make him confess to having taken part in the massacres of 1993. As he had nothing with which to reproach himself and wanted the torture to cease, he reportedly declared that he had killed his uncle, although he knew that he was alive. No check was reportedly made and he was apparently prosecuted on the basis of his own confession. At the time of the Citega criminal court hearing, the supposed victim (i.e. his uncle) appeared before the bench. Frédéric was then acquitted, but no compensation was apparently granted to him although he had unjustly been kept in prison for five years.

(b) Violence attributed to rebel groups

33. On 8 October 2001, a vehicle belonging to some French nuns from Gisuru parish, in Ruyigi province, was reportedly the target of an ambush by members of the rebel forces. No one is said to have been injured but the occupants of the vehicle reportedly had all their property

taken from them. In another commune of Ruyigi, at Butezi, a tradesman was reportedly injured when the rebels, who had intercepted him together with his fellow workers, made off with their goods.

34. On 10 December the Special Rapporteur went to Musema, in Butaganzwa commune, Kayanza province, where a few weeks earlier, on 9 November, more than 400 pupils (girls and boys) were reportedly taken from their beds at dawn and abducted by the rebels (approximately 300 people, 150 of them armed, and several minors), after they had burned some of the school facilities (the canteens, dormitories, kitchen and the room containing the school archives). The young girls are said to have escaped shortly afterwards, but the boys were reportedly forced to follow the armed group. According to witnesses, they were used as porters and had walked for a number of kilometres barefoot, many of them without clothes. During the clashes that occurred later between the military and the armed groups, many reportedly escaped and went back to their school during the day, except for seven of them, about whom there was still no news on the day of the Special Rapporteur's visit. At least two pupils, one of them a girl, were reportedly wounded by stray bullets or grenade fragments. The situation of the pupils one month later remained precarious. Most of the dormitories had burned and the pupils were being crowded together in make-shift dormitories and obliged to sleep on mattresses on the floor. Emergency assistance was being provided to them by the United Nations Children's Fund (UNICEF) and by representatives of the international community. The Government was reportedly taking similar action and promised to exempt the pupils from the "*minerval*" school fees for the remaining two terms (amounting to 16,000 Burundian francs per pupil). However, this assistance is by no means enough to solve the schooling and financial problems caused by the attack, given the precarious situation of the majority of these pupils.

35. According to Government sources, the armed groups killed 201 people and injured 101 others between October and the beginning of December. In addition to the pupils at Musema, they reportedly abducted 50 school children and 20 adults, stole 997 cows and other goods, and, lastly, caused various kinds of material damage to public infrastructure.[1] The rebels in turn have accused the military of being the main perpetrators of these abuses.

(c) Violence attributed to persons unknown

36. Since August, several people have reportedly been killed or severely injured by anti-personnel landmines. On 13 August, one person reportedly died after stepping on a mine at Mayange, Makamba province, while two others were reportedly injured at Kivoga, during the night of 6 August 2001. On 17 September 2001, when going to fetch wood for his grandmother, young Jean-Marie Bigirimana is said to have died after stepping on an anti-personnel land mine. On 4 October 2001, a young *gardien de la paix* was reportedly injured by a mine at Nyantakara, near the Tanzanian border. On 20 September, another is said to have been injured on the eastern border at Makamba. On 4 October 2001, a woman was reportedly severely injured in Ruyigi province by an anti-personnel landmine as she was going to the fields. The accident is said to have occurred on Kinama *colline*, Gisuru commune.

3. Violations of indivudals' physical integrity

(a) Torture and degrading treatment

37. On 22 September, a certain Gatonge was reportedly tortured on Mugongo *colline* (Bubanza province) by members of the military in an act to avenge a comrade-in-arms. Gatonge was reportedly left in a ditch after having been hit with rifle butts and an iron bar. Two young people suspected of theft and living in Bukurasazi district (Kinyankonge) are said to have been tortured by *gardiens de la paix* at the Kinama district centre on the northern outskirts of Bujumbura during the morning of 29 August 2001. Mr. Sylvestre Nyandwi, an inhabitant of Ecosat district (Kamenge region, in the mairie of Bujumbura), was reportedly tortured with an electric wire in Kamenge region by a police officer by the name of Joachim Ndayizeye. Believing that his complaint to the police against someone who had beaten his wife had not been treated with sufficient diligence by police officer Joachim, Sylvestre reportedly appealed to his superiors. The officer, no doubt humiliated, is said to have summoned Joachim and to have threatened, beaten and tortured him.[2]

(b) Acts of rape

38. On 24 July 2001, the father of a girl in the fourth form at primary school in Musigati reportedly complained against a member of the military from the Musigati military position who, after having raped his granddaughter, gave her 3000 Burundian francs so that she would not tell anyone. The complaint seems to have been filed after the little girl was found to be in a distressing state. No further action would appear to have been taken on the matter. Mr. Habimana, a father of five children and a resident of Kiyonza district (Bugabira commune), is said to have raped a 13-year-old girl called Uwizeyimana on 13 September. The presumed offender was reportedly imprisoned by the Kirundo public security police, and then released a week later by the prosecutor, whom he reportedly told during an inspection of the *cachots* that he had been arrested for not having an identity card. He is apparently now being sought by the police. During the night of 22 to 23 October, a farm worker called Léonce Miboro, aged 18, reportedly raped a 5-year-old girl. It is understood that the rapist was arrested two days after his abscondment and that the case was brought before the judicial officer of Gitobe.

39. In its December 2001 report on the *gardiens de la paix*, entitled "Protéger le peuple: programme gouvernemental d'autodéfense en Burundi", Human Rights Watch cites one *gardien de la paix* as stating at that many of his colleagues had committed acts of rape either when on surveillance duty or during rest periods in the regroupment camps, at the time when they existed. Some *gardiens* and soldiers thus reportedly raped women intercepted on roads while they were going to fetch water outside the sites.[3] During her visit to the Lukole refugee camp in Tanzania, the Special Rapporteur noted that one of the human rights violations reported by camp residents was the frequent rape of young girls, in particular when they went out to fetch wood. The centre for providing assistance to victims of sexual violence set up by the Office of the United Nations High Commissioner for Refugees (UNHCR) is said to be catering for an average of five rape victims per month. This centre, which is an interesting initiative, also helps victims of domestic violence and arranges for legal aid. Some cases of rape are also attributable to the armed groups

that reportedly commit such acts when abducting members of the population, especially young persons. Most of these cases are said to go unpunished because they are not reported. It should be said that Burundian society is very discreet about sexual intercourse, even when involving violence, and that a girl who admits to having been raped is likely to be ostracized.

4. Internally displaced persons

40. Insecurity and war encourage the temporary displacement of populations and contribute to the increasing number of persons living in older sites for displaced persons. Burundi has about 500,000 internally displaced persons, the great majority of whom live in such sites, added to which there are those who have not returned home, after the dismantling of the regroupment camps, for reasons of security or access to health care. A UNICEF study in June 2001 reveals a large increase in the number of internally displaced persons (432,809), spread out over 212 sites.[4] The provinces most affected are those of Bubanza, Bujumbura-rural, Gitega, Makamba, Muyinga, Bururi, Rutana and Ruyigi. It is estimated that 20,000 civilians were displaced as a result of the fighting between the army and rebel factions in mid-September 2001. Since then the movement has increased further because of the continued fighting. An increase is also to be feared if a ceasefire is not agreed quickly. The people affected represent about 20 per cent of the population; 60 per cent of them are young persons under 20 years of age and 30 per cent of households are headed by a woman or a child.[5] All these population movements have led to the destruction of homes, the break up of families, the deterioration of the social fabric, a reduction in agricultural production and, of course, a lowering of standards of living for some segments of the population. The result is an accelerated decline in all human development indicators, and the number of people living below the poverty line has risen considerably.

41. The difficult access to these older sites for displaced persons gives rise to concerns about the living conditions of the people who are residents there, in particular widows, the elderly and children, who often live in intolerable hardship.[6] An action plan coordinated in July by the Office for the Coordination of Humanitarian Affairs (OCHA) for Burundi focuses on the living conditions of internally displaced persons, as well as the solutions and strategies envisaged to resolve their problems. This coordinated action deserves the full attention of the Government and the international community since, until a lasting peace is established, the management of these sites and the improvement of the situation of the displaced persons constitute a major challenge for everyone. In order to prevent corruption and misappropriation, the Ministry of Reintegration of Refugees, Displaced Persons and Repatriates intends to disengage itself from the direct distribution of aid to these people, with this task being entrusted to local and international NGOs, as well as to religious communities and others. Another project of the new incumbent of this Ministry is to seize the opportunity of the return of refugees and displaced persons to promote a policy of urbanization, which the Minister believes will have a positive effect on the coordination of humanitarian assistance and the security situation. The National Commission for the Rehabilitation of *Sinistrés* (CNRS) provided for in the Arusha Agreement will deal with all matters relating to the return of refugees and displaced persons. The problem of land, a key issue given the country's population density (400 per km^2), will be handled by the subcommission established for that purpose. Awareness-raising campaigns to promote a culture of peace, human rights and reconciliation will also be crucial for the success of repatriation.

5. Situation of refugees

42. The conditions of security and life in Burundi are so precarious that they have had a negative influence on the expected return of refugees, notwithstanding the tripartite agreement between UNHCR, Tanzania and Burundi. The lack of an effective peace may, indeed, jeopardize their return in large numbers. According to information gathered at the UNHCR office, 2,519 refugees returned to Burundi in October 2001. Most of these returnees, or 2,488, came from Tanzania, 8 came from Kenya and 2 from the Democratic Republic of the Congo. A voluntary return of refugees from Tanzania is also recorded in Makamba province. According to the local authorities, 1,965 people returned to the province between the beginning of this year and the end of September 2001, a figure markedly lower than that for the year 2000, when it was 3,944. Natives from this province who are in Tanzanian camps and waiting to return are thought to number 63,459. In Muyinga province, there is also a continuing trend towards voluntary return, even if the flows are not very large.

43. Nearly 600,000 (595,705) refugees are thought to be living outside the country. In addition there are some 200,000 people settled abroad since the 1970s, who probably do not plan to return to Burundi and who are not being looked after by UNHCR. Most of the Burundian refugees live in Tanzania, Rwanda, Zambia and the Democratic Republic of the Congo.

44. The Special Rapporteur travelled in Tanzania to the district of Ngara, where she visited the refugee camps administered by UNHCR. There are three such camps: Lukole A and B and Mbuba, a transit camp for new arrivals. As of 31 October 2001, the camps were catering for a total of 122,000 refugees, including 102,000 Burundians.[7] Spontaneous returns for 2001 are estimated by UNHCR at between 20,000 and 21,000. However, according to the UNHCR sub-office at Ngara, this figure does not correspond to the number of departures from camps recorded in Tanzania. This could be explained by the fact that refugees might have moved forwards and backwards between the two countries without the camp administration's knowledge, because of the difficulties of supervision and the probable trafficking of ration cards or other documents.

45 As regards the displacements of refugees and their reception in Tanzania, UNHCR signed an agreement with the Tanzanian authorities to increase the size of the police force providing for the security of the camps. However, when the Special Rapporteur asked the UNHCR officer responsible for the camps about possible clandestine movements of refugees towards Burundi from the camps, he answered that there might indeed be some unsupervised movements. As the camps are not closed facilities, cross-border movements could not be ruled out, notwithstanding the efforts of the Tanzanian authorities to secure the borders with Burundi. This quite simply means that unrecorded movements of refugees might or might not occur towards Burundi from the camps, and with some refugees living outside the camps, such movements, if any, are not known to the officials responsible for the camps and the Tanzanian authorities, and take place without their authorization. The Special Rapporteur's interviews with representatives of the Lukole refugee camp indicate that the information available to the refugees does not encourage them to return to Burundi. The main impediments are insecurity, fear of reprisals from the armed forces, which they would like to see reformed, as well as fear of harassment by the local authorities, lack of confidence in the justice system, the obstacles which they think might be

encountered in their integration into working life and, lastly, the difficulties of the integration of their children into schools in Burundi. Moreover, they do not know where they might land in the event of a return, and are mistrustful of the Arusha Agreement.

46. It should be noted that 25,000 pupils are spread out in the 13 schools between Lukole A and B. There are 266 teachers for these pupils. The problem for them concerns the equivalence of the diplomas issued to pupils and teachers having received UNICEF-approved training. Burundi is also hosting refugees from the Democratic Republic of the Congo (approximately 27,000, of whom 7,345 are assisted by UNHCR), from Rwanda (approximately 1,200, of whom 33 are assisted by UNHCR), from Tanzania (2, likewise assisted by UNHCR) and, lastly, from Somalia (11, all of them assisted by UNHCR). The Special Rapporteur noted that the situation of Congolese refugees in Burundi is now improving.

6. Violations of the right to freedom of movement and freedom to choose one's residence

47. At the beginning of October 2001, nearly 20,000 people were forced to change their places of residence, fleeing the fighting between the FNL rebels and Government forces at Mageyo in Isale commune, Bujumbura-rural province, at about 15 km from Bujumbura, on national highway 1. On 3 October 2001, in the province of Bubanza, in Rugazi commune, Muzinda region, clashes between Government forces and FNL rebels led to the displacement of 3,500 households, or about 9,200 people. According to commune officials, their homes were looted and burned within a week, and they received no assistance. In Bururi province, including in the communes where warfare and insecurity are still prevalent, it is easy to move between 6 a.m. and 5 p.m., but at night the insecurity and numerous checks limit freedom of movement. In its report, the Itéka league cites a case of violation of the right to freedom of movement observed in Rumonge commune, where some officials and service staff are said not to have the right to leave one area for another without the agreement of the commune administrator.[8] The many ambushes by the rebels on public highways are also violations of this right.

7. Violations of freedom of opinion, expression and assembly

48. Some political parties and movements[9] opposed to the present Government complained to the Special Rapporteur that their activities are not authorized by the Government, which was said to be denying them the right to hold demonstrations. Their militants were said to be frequently subjected to arrests, intimidation and dismissals. They reportedly have limited access to the State media, and their offices are said to be constantly attacked. The Minister of Internal Affairs and Security, with whom the Special Rapporteur discussed the matter, affirmed that these groups and parties can hold meetings, as long as they remain within the law, but the law does not allow them to demonstrate. This prohibition is said to apply to all political parties in Burundi without exception, because of the war situation in the country. Furthermore, during demonstrations organized by these groups, some participants are said to have brandished knives and chanted offensive slogans, inciting hatred of the institutions in place. One of these groups, the Puissance d'autodéfense (PA) - Amasekanya self-defence organization, is even said to be illegal, not having received any approval.

49. A protest march by members of the Parti pour le redressement national (PARENA), the party of the former President of the Republic in exile, Jean-Baptiste Bagaza, was reportedly broken up by the police in Bujumbura on 1 September 2001. Several members of this party were reportedly arrested, jailed and released the following day. Two weeks later, some militants of the same party were furthermore reportedly arrested by the police in Bujumbura when they tried to organize another march. The persons arrested are said to have chanted slogans and displayed banners criticizing the Arusha Agreement. Even the representatives of the political parties represented in the Government have complained that their freedom of expression is limited. Press representatives met by the Special Rapporteur also complained of the absence of open debate in the media, which have limited means, in particular the written press. The very restrictive law on the media is said to give rise to interpretations obliging journalists to practise self-censorship. Some representatives of the armed forces are said to be exerting pressure on journalists for them not to disseminate certain kinds of information relating to the armed conflict. On 19 October 2001, the director of African Public Radio, a private radio station in Bujumbura, Mr. Alexis Sinduhije, was reportedly arrested, without a warrant, by Colonel Marc Nahimana and Major Ntemakom. When brought to the Special Investigation Brigade, he was reportedly beaten, insulted and then freed the following day after he had paid a fine of 20,000 Burundian francs. He was reportedly accused of having spoken to members of the South African military from the Special Protection Unit. Overall, however, some liberalization may be noted at the level of radio broadcasting and the new Minister of Communications informed the Special Rapporteur of his intention to encourage the development of the media. The general conference of the Burundian media, from 13 to 15 December, brought together 160 delegates (mostly journalists) with a view to defining a new policy on mass communications.

8. Violations of the rights of persons deprived of their liberty

(a) Prisons

50. The total prison population in Burundi is approximately 8,803, of whom 70 per cent are awaiting trial. There are 6,003 men, 109 women, and 121 minors.[10] The situation at Mpimba prison has not changed significantly since last year. The number of convicted prisoners is rising as a result of efforts by the competent courts. People awaiting trial still represent over 60 per cent of the prison population, however, and some have been awaiting trial for years. Some 29 per cent of the inmates have been sentenced to death, and 18 per cent, to life imprisonment, mostly in connection with the events of 1993. None of those sentenced to death before 1998 received any legal assistance. In December, Mpimba prison was housing 2,583 detainees, of whom 1,373 were awaiting trial and 1,199 had been convicted.

51. In September, Bururi prison held 270 detainees, including 1 infant, 10 women and 5 minors. Thirty-nine of the inmates had been sentenced, 230 were awaiting trial. According to the judicial authorities, the reason for the large number of individuals awaiting trial was a hold-up in the Court of Major Jurisdiction. The shortage of judicial officers in the prosecutor's office was another reason why cases were being held up. Gitega prison held 1,643 inmates in December - 1,050 individuals awaiting trial and 569 convicted prisoners. The problems were the same as at most Burundian prisons. Among the 20 minors in Gitega prison, only 1 had been convicted; the remainder were awaiting trial. The longest-standing inmate, Mr. Nestor Nshimirimana, had been in pre-trial detention for five years. Since 1999,

his case had been forwarded by the Office to the prosecutor in Gitega, and then to CGDPH. On reaching majority, Mr. Nshimirimana had been transferred to the adult quarters. According to OHCHRB observers who spoke to the minors, none of them had seen the judge who was supposed to rule on their detention within the 15 days stipulated by the Code of Criminal Procedure.

52. The Special Rapporteur would like to draw attention to the case of Mr. Emmanuel Sibomana, aged about 20, sentenced to two years' imprisonment for theft, who suffers from a serious mental illness that makes him aggressive towards his fellow inmates. Because of this, the prison security authorities keep him permanently handcuffed. Being unable to detain him separately or set him free, the prison administration hopes to be able to arrange parole. It would be preferable were he able to receive medical treatment appropriate to his condition.

53. The legal situation of the inmates in Ngozi is among the most alarming. The number of convicted prisoners does not seem to have changed for years, while the number of those awaiting trial increases daily. In December, the prison was housing 2,380 inmates of whom 2,003 were awaiting trial and 25 had been sentenced. Rumonge prison, one of the largest in the country, had 674 inmates in September, most of them being dealt with by the Bururi prosecutor's office, the remainder by the prosecutor in Makamba. There were also a large number of prisoners condemned to death who had been transferred from Mpimba. The physical and human constraints on the prosecutors' offices in Bururi and Makamba are slowing the processing of cases enormously. As a result, some detainees have been awaiting trial for years (up to five). In September, the prison housed 256 individuals awaiting trial, including 9 women; 413 convicted prisoners, including 9 women; and 132 prisoners condemned to death, including one woman and one 15-year-old minor. There were 13 long-standing inmates, 9 of whom had been in the prison since 1996, and 4 since 1997. Twenty-seven further inmates had been put on trial but had never been informed of the outcome. One had been in prison since 1995 for aggravated robbery. The Special Rapporteur visited Rumonge prison on 7 December 2001 and was able to discover for herself the unacceptable legal status of some of those awaiting trial. That day, the prison contained 678 inmates, 261 of whom were awaiting trial and 412 of whom had been convicted (132 sentenced to death). The prison can hold 800 and is not, therefore, unlike most of the prisons in the country, overcrowded. Women are held in separate quarters from the men; the same is not true of minors, and prisoners condemned to death are not held separately from other inmates. Two cases, of mentally ill inmates who have been held in complete isolation for nine and five months respectively, are particularly disturbing. Their situation requires rapid intervention by the authorities, if only to provide them with appropriate care.

54. The Special Rapporteur also met Mr. Apollinaire Ndikumasabo, aged 15, who was being held for rape. According to his account, he had been working on the domestic staff of a private individual and had wanted to quit his job and work elsewhere. His employer had refused, and Mr. Ndikumasabo had been arrested and accused of raping his employer's five-year-old daughter. He claimed to have spent 19 days in the public security police *cachot*, and to have been beaten while being questioned.

55. Despite the director's efforts to keep the premises in an acceptable state, the prison has physical and sanitary problems. The sick bay is closed and there is no pharmacy, not even a rudimentary one. Inmates are not visited by a doctor and have to be taken to Rumonge hospital if the need arises. The major problem is the legal status of the inmates. Staff from the prosecutors' offices in Bururi and Makamba, which are respectively 39 and 90 km from Rumonge, almost never visit the prison. The last visit by the Bururi office was in March 2001. No one from the Makamba office has visited over the past year. The reasons offered by the two offices, in particular the five judicial officers in Bururi, i.e. a lack of facilities and the lack of security, are absolutely no excuse for such irresponsibility since the local associations have offered to make a vehicle available and OHCHRB has offered to provide the petrol. The judicial officers could also have travelled with the provincial governor, who visits Rumonge several times a week.

56. After leaving Burundi, the Special Rapporteur received a letter from the Procurator General of the Republic dated 15 January 2002 informing her that, in response to the letter she had sent him on 7 December 2001 to draw his attention to the disastrous situation, a mission headed by the chief prosecutor of the Court of Appeal in Bujumbura had been sent to Rumonge to gather precise information about the irregularities which the Special Rapporteur had mentioned. Annexed to the letter was another letter, dated 12 December 2001, from the chief prosecutor of the Court of Appeal in Bujumbura, stating that during his visit he had found that "all the cases mentioned by the Special Rapporteur had already been cleared by the judicial officers of the prosecutor's office in Bururi", and that "if there was a bottleneck, it was at the Court of Major Jurisdiction. While he was at it, though, he had made an inspection of the prison, checking on 43 inmates: 9 had been granted parole on the spot, and a further 25 would be once the prosecutor's office in Bururi had checked that 'their files had not already been attended to'".[11]

57. On 24 October 2001, the local prison in Ruyigi housed a total of 334 inmates, 170 of them awaiting trial and 161 convicted prisoners. For lack of transport, no magistrate in Ruyigi district had travelled anywhere since April. The problem amounted to an injustice for the people detained in Cankuzo who, unlike their fellow detainees in Ruyigi, had not been convicted and thus had no opportunity to apply for parole. The Special Rapporteur's attention was drawn to the case of three inmates - Mr. Nestor Ngarama, Mr. Pascal Nyawenda and Mr. Cyprien Nzeyimana, all facing charges of theft - who had been waiting since 1997 for the hypothetical trial that would determine their fate. Establishing minors' ages is always a problem in Burundian prisons. The inmates have no identity papers, and there are always discrepancies between how old they and the judicial police officers mentioned in their case files say they are.

(b) Other detention centres

58. There were irregularities at many of the *cachots* visited by OHCHRB observers in September and October 2001: the Bujumbura public security police (PSP) *cachots*, the Bururi brigade *cachot*, the Ijenda gendarmerie brigade *cachot*, the Mwaro brigade *cachot*, the Buyenzi zone *cachot*, the Gatumba zone *cachot*, the Muyinga PSP *cachot*, the Muyinga brigade *cachot*,

the Cibitoke PSP *cachot*, the Ngozi PSP brigade *cachot*, the Kirundo and Kayanza brigade and PSP *cachots*, and the Gitega PSP *cachot*. Most of the irregularities concerned detentions beyond the legal limits, ill-treatment of inmates, military interference in the administration of justice (in the Gatumba zone) and intolerable prison conditions.

9. Children's right to special aid and assistance

59. The groups particularly at risk are street children, child heads of household, incarcerated minors and child soldiers. According to a study carried out in Burundi by Terre des Hommes, there are 1,073 children living in the streets of Bujumbura, 300 of whom are there every day. As society gets poorer, their numbers swell. Child heads of household are particularly at risk, owing to the ravages of war, the spread of HIV/AIDS and malaria. On average, each is supporting three brothers and sisters. An estimate covering six provinces suggest that there are 6,000 child heads of household. They have to cope with numerous problems to do with housing, food, health and school attendance. They are, moreover, often illegally dispossessed of land their parents had abandoned before they died. This problem requires especial attention, and texts must be drawn up to protect these children.

60. Incarcerated minors fall into two categories: those in conflict with the law (numbering 121) and those living with their imprisoned mothers (totalling 39). Their situation is changing thanks to efforts by UNICEF. Some prisons, Muyinga for example, now house no incarcerated minors.

61. One of the most serious violations of children's rights in Burundi has to do with child soldiers, to which both sides have recourse to swell the numbers of adult fighters. They are chiefly used to run errands and carry weapons. Many arguments have been put forward to account for or justify their presence amidst armed conflicts. It is, nonetheless, an undeniable fact that these children are deprived of their innocence and rapidly turned into killers, recruited to wage a war that only adults want; what is more, they often find themselves handling weapons with which they have little experience, and thus become unwilling victims of the deadly conflict. In the long term, the very future of Burundi is at risk even though, paradoxically, all the warring parties claim to be fighting for the interests of their country. On 30 October 2001, UNICEF signed a protocol of agreement with the Government to conduct a survey of child soldiers in the Burundian army with a view to designing schemes for demobilizing them and returning them to life in society. The Government had already passed a decision banning the recruitment of anyone under the age of 18 into the army. It remains to be seen whether this decision will be respected in the field and by all concerned, including a good many parents who, for prestige or out of necessity, lie about the ages of their children whom they want to see enrolled in the army, or, failing that, in a Government militia, at any price. Child abduction is a serious problem associated with several absolutely intolerable violations. Since July, several hundred children and young teenagers have been abducted, often to be forcibly enlisted in armed groups or forced to join the army or Government militias. Sometimes, however, abductions are a way of exacting reprisals. Many children, according to some accounts, have disappeared and ended up swelling the ranks of the refugees.

10. The rights of women

62. Since the Special Rapporteur's last visit there have been a number of developments offering hope of an improvement in the status of women and greater awareness of women's rights. In late July 2001, the Rassemblement national des femmes burundaises (RANAFEBU), whose mission is to bring women together regardless of their ethnic group, origins, social class, religion or political party and whose foundation the Special Rapporteur had announced in earlier reports (see, inter alia, E/CN.4/2001/44, para. 117), at last came into being and is now awaiting official approval. Its President-elect is Mrs. Nduwimana Goreth, who, since the transitional Government took power, has been appointed the new Minister for Women's Welfare and Social Affairs. The movement has set itself the objective of providing a venue in which all Burundian women can express themselves, evaluate the activities of national institutions and mount a permanent guard against injustice, exploitation, discrimination, exclusion and violence against women. Women from all provinces - two per province - will be represented. The movement does not yet have an established headquarters, and is still very short of funds.

63. Another significant development has been the appointment of three women to the new Government, to take charge of women's welfare and social affairs, the reintegration of refugees, displaced persons and repatriates, and action to combat HIV/AIDS, respectively. Forty per cent of the membership of the youth council that is to be established shortly will be made up of girls. Women still need to occupy a more prominent position in decision-making bodies and bodies set up under the Arusha Agreement. Lastly, the Government has ratified the optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The World Food Programme (WFP) sets great store by the fact that women benefit equally from the food aid it distributes, and takes account of the gender dimension in the operation of school canteens. The United Nations Development Fund for Women (UNIFEM) is financing a project to determine what position women occupy in each sector of Burundian society, the better to be able to evaluate their needs. It is also conducting other activities - promoting laws relating to women, identifying areas in which legislation is needed, supporting women leaders, and training refugee women in Tanzania. It also has an interest in violence against women, programmes to combat HIV/AIDS, the inclusion of women in the institution of Bashingantahe,[12] training for the staff of international organizations operating in the country and encouraging the members of the Arusha Agreement Implementation Monitoring Committee (CSAAP) to incorporate a gender perspective into their work.

64. Many obstacles to the advancement of women still remain, however, such as the hold-up over the bill on inheritance and matrimonial property rights, which has still not been brought to the attention of the minister responsible, far less the Council of Ministers. The minister foresees the adoption of the bill some time in the coming year. It must be hoped that the bill will rise above all the difficulties and social constraints that have been brought to the Special Rapporteur's attention, becoming one day a law that all in Burundi, male and female, will accept.

65. Women's standing in society, especially that of women in rural areas, widows and women living among displaced or disaster-stricken groups, has not improved from what the Special Rapporteur related in earlier reports. On the contrary, it has declined as the conflict and the economic crisis have gone on. The weight of tradition is still a big impediment to women's realization of their potential. While bringing about peace remains the priority, women's

problems are regarded as secondary or, at the very least, less pressing, even by women themselves. Most women say they have more to gain from a halt to the war than from a proliferation of institutions, so if the institutions that were set up as part of the transitional arrangements did not help to bring about a swift cessation of hostilities they would lose all credibility with most women, and indeed with everyone else in Burundi.

11. Rights of the Twa minority

66. "Unissons-nous pour la promotion des Batwa" ("Let us unite for the benefit of the Twa"), an organization of some 10,000 to 20,000 Twa headed by Libérate Nicayenzi, a member of the National Assembly and the only Twa female intellectual, has informed the Special Rapporteur of numerous problems encountered by members of the community it represents. It claims that the Twa are ill-used in all areas of life, in particular as regards access to education and health; they are also extremely poorly represented on decision-making bodies. There is only one Twa member of the National Assembly. The Twa were not represented during the peace process though they suffered just as much, proportionately, as other communities. They have been allocated three seats in the new Senate, but are disturbed that they have no right to choose their own representatives. They possess no land and fear they may be denied the property rights to which all Burundians are entitled on grounds of cultural prejudice or, quite simply, because any return of refugees and displaced persons will not leave them in pride of place. This situation is helping to accentuate their already extreme poverty and is leading to other violations of their rights including the rights to work, housing and food. It has thus become urgent to help the Twa now, like other disaster-stricken groups in Burundi, by engaging in - and why not? - positive discrimination, among other things.

B. Social, economic and cultural rights

67. The humanitarian situation deteriorated in November 2001, in the province of Bujumbura-rural especially, where access is difficult owing to the fighting and lack of security. Despite everything, humanitarian workers do manage to reach those affected except at a few sites such as Kavumu (Bujumbura-rural) to which the authorities often refuse access. The standing machinery concerned with displaced persons that was set up in early 2001, consisting of representatives of the Government and the humanitarian community, is functioning properly.

68. The food situation remained stable in 2001, but management of stocks is still a major problem. The feared rise in malaria cases in the last quarter of the year failed to materialize. Access to drinking water is still limited, however, and despite an increase in the numbers of people with access to drinking water since 1999, only 40 per cent of the population is covered. Thanks to WFP aid, the right to food of the most vulnerable groups is being respected.

69. The right to own property is not being respected in Makamba province and, especially, in the commune of Nyanza-lac. In 1972, when the fighting broke out, the original inhabitants of Nyanza-lac took refuge in Tanzania and their property was taken over by those (generally relatives of theirs) who remained behind. Now it has been announced that the refugees will be returning, land squabbles threaten to jeopardize the future peace unless a means of avoiding them is devised now. The problem is also acute in other parts of Burundi.

1. The right to health

70. One of the most important problems in the health field is the spread of HIV/AIDS. Infection rates are 18 per cent in the towns and 7.5 per cent in rural areas, placing Burundi thirteenth in Africa and second within Central Africa.[13] The rise in the infection rates and the number of AIDS patients is due to the continuing war, poverty, and a shortage of training and information. Women, particularly those living among displaced groups and in highly unsafe areas, are the most at risk. There has also been an increase in the categories of population at risk (refugees, displaced persons, the unemployed, orphans, prostitutes, etc.). The spread in HIV infection is causing a fall in primary school attendance, a decline in the health and well-being of the populace and even a scarcity of farm labour, leading to a drop in productivity that threatens GDP growth.

71. The Government submitted a plan to the Geneva Conference last December consisting of three phases: preventing, coping with and reducing the impact of AIDS, plus strengthening institutional capacities, including local associations combating AIDS. The plan extends over five years (2002-2006) and embraces 16 programmes together costing US$ 234 million. The institutions set up for the purpose are the Ministry of State to the Presidential Office, providing the muscle for the National Council, a consultative body bringing together representatives of all the ministries concerned, civil society and AIDS patients, and a permanent executive office. It is to be hoped that the fields of competence of each will be clearly demarcated, and that the three will manage to coordinate easily.

72. At the moment the Government is taking the following action: handing out a subsidy of 5 million Burundian francs, exempting imported medical supplies from tax, and supplying generic drugs, thus considerably reducing costs. Yet the reduction in the costs, which now stand at 30,000 Burundian francs per patient per month, which these measures brought about, still leaves care out of the reach of most patients. As regards violations of the right to health, the Special Rapporteur has been apprised of the situation of patients in the Prince-Regent-Charles hospital in Bujumbura, the university hospital centre in Kamenge and the hospital in Ngozi. It is claimed that patients who obtain medical attention there without paying are held hostage until their debts to the hospitals have been cleared, and that they can be held for several months. Given that the costs of health care at most facilities have gone up (the initial deposit at Ngozi is now 10,000 Burundian francs, for example),[14] that many patients cannot afford health insurance cards at 500 Burundian francs a time, and that the standard of life in Burundi has been very low for several years now, some situations are becoming unacceptable. The Special Rapporteur is informed that, in an attempt to deal with this problem, the Minister of Public Health has just suspended a unilateral bid by the independent hospitals to raise the prices of medical records and services, on the grounds that these health facilities exist for social, not commercial, ends.[15] It is important that this ruling is universally applied.

2. The right to education

73. The dire effects of the fighting in Burundi on the right to education can never be overemphasized, since school facilities are increasingly seized upon by the combatants as military bases or destroyed to prevent others from doing so. Pupils - even those at primary school - have also become pawns in the fighting and this, as has been said before, is inadmissible

(the cases of Musema and Ruyigi in particular). A great many young Burundians cannot now exercise their right to education for economic or security reasons, not to mention the problems that schoolteachers face in honouring their commitments to the schools. On the subject of financial constraints, the question of assistance with secondary schooling is becoming acute since most donors provide support only for schooling at the primary level. The result is that only 20 per cent of schoolchildren pursue their studies beyond primary school. The problem of street children is growing and delinquency is on the rise, forcing many young people to join the army or government militias early.

C. The justice system and the rule of law

74. The justice sector is suffering from shortage of personnel and funds. To avoid weighing it down with ethnic burdens, the ranks of Hutu judicial officers, currently smaller in number, must be swelled. Steps are now in progress not only to increase the overall number of judicial officers but also, especially, to reduce this numerical inequality. The Ministry of Justice is planning to introduce a policy of evening out the judicial apparatus by laying on accelerated training courses and encouraging the return of exiled judicial officers and legal experts. According to the Minister, the new Government's arrival in office has reassured judicial officers, and this should have a beneficial effect on the operation of the justice system. Meanwhile, prosecutors' offices have been bolstered by introducing a roaming system allowing files to be transmitted to criminal divisions. The slow progress of justice and overcrowding in prisons remain problems, however, because the criminal divisions cannot handle all the cases. Adequate funds need to be allocated to judicial officers so that they can regularly visit detention centres and release inmates who are being held against the rules. The other way of reducing overcrowding in the prisons is parole, objectively and transparently granted.

75. Hopes are being pinned on institutions that might exert a beneficial influence on the justice system and human rights, such as CSAAP, the Ministry of Justice, the Ministry of Human Rights, Institutional Reform and Relations with the National Assembly, the Ministry of Good Governance and Privatization and the independent commission set up to investigate matters relating to prisoners. The European Union, for its part, is working on a EUR 10 million aid project for the justice sector with the Government as its principal partner: the aid will extend over three years and cover all aspects of the justice system. Many NGOs are working to improve the justice system; their activities include legal aid, publicizing and promoting the justice-related provisions of the Arusha Agreement, supporting the traditional Bashingantahe justice system,[16] training judicial officers, including officers for the domestic courts,[17] investigating customary jurisprudence on the subjects of inheritance and children, transporting witnesses, and publicizing and translating the texts of laws. A strike by judicial officers in September 2001 paralysed the justice system for three days: the officers wanted the Government to grant them special status so as to improve their working conditions. The strike delayed the start of the new legal session, initially planned for 3 September 2001; it eventually began on 6 September. Needy defendants have continued to receive assistance from OHCHRB in the country's three criminal divisions. OHCHRB has taken part in a number of meetings to launch the "Support for good governance" project. The project has been reworked to incorporate the objectives of promoting human rights and strengthening the rule of law. It is planned to last three years (2002-2004) and cover three

main areas: democratic governance and the rule of law; administrative governance; and economic governance. OHCHRB is a member of the steering committee and the group working on democratic governance and the rule of law.

76. The second session of itinerant hearings began on 22 October 2001. The criminal divisions of Gitega and Ngozi held sessions in Gitega and Muyinga respectively, while the Bujumbura division, for security reasons, was authorized to hold a session in Bujumbura. Holding itinerant sessions enabled the divisions to hand down a number of decisions: they held 31 public hearings, considered 205 cases and reached conclusions on the merits of 54 cases (26 per cent of the total) involving 99 accused. One case was returned to the prosecutor's office for further inquiries. The obstacles to the proper operation of the criminal divisions remain unchanged, especially the failure of witnesses and civil claimants to attend proceedings, which forces the courts to defer consideration of most cases. Another result is that the length of time indicted prisoners are held in pre-trial detention can become indefinitely protracted. The Special Rapporteur would like CGPDH to take up the question of the Canzuko prosecutor's office. She recommends that the travel schedule for the Canzuko court should be approved as soon as possible so that the office, which has been paralysed since July, can resume work.

D. Promotion of human rights

77. The priorities, which the new Minister for Human Rights, Institutional Reform and Relations with the National Assembly discussed with the Special Rapporteur, will be:

(a) As regards institutional reform: implementation of the Arusha Agreement, in particular the law on genocide, war crimes and other crimes against humanity, the law on temporary immunity and the elections act;

(b) As regards human rights: pursuit and strengthening of existing policy, particularly the promotion and raising of awareness of human rights and the strengthening of bodies such as the Centre de promotion et de lutte contre le génocide, the Government Commission on Human Rights (CGDPH), local committees, provincial commissions and local associations.

78. The Minister expressed the hope that the Government Commission would in time evolve into a national human rights commission. It has a headquarters and a permanent secretariat, receives applicants daily, and has been producing monthly reports since July. Its budget has been increased, but its actions are still restricted by its composition and the way its members are appointed. The Ministry will have a budget of 71 million Burundian francs, or 0.43 per cent of the total government budget; official speeches notwithstanding, this does not suggest that human rights are at present a priority for the Burundian Government, any more than the advancement of women or good governance, for which the ministries concerned receive roughly equivalent budgets.

79. Between 17 September and 5 October 2001, OHCHRB organized the very first human rights training seminar specifically for women in the provinces of Bujumbura-Mairie, Gitega and Ngozi; this was a great success. A total of 75 female leaders of women's associations attended

the three training sessions. At the request of the Ministry of National Defence, OHCHRB has provided training in human rights for would-be judicial police officers attending the Bujumbura training centre. With OHCHRB backing, the human rights association "Agir-Dufatanye" put on a lecture on 21 September 2001 on the subject "Efficacy and effect of transporting witnesses and civil claimants".

80. OHCHRB continued to hold meetings with the various Burundian human rights associations in preparation for the signature of a framework agreement on cooperation on 16 November 2001, the aim of which was better coordination among the activities of the various human rights associations. The agreement brings together 28 human rights associations with an executive committee that was established subsequently. The move has aroused great interest, and other associations have expressed the wish to join.

81. OHCHRB and the human rights associations have mounted media campaigns against torture and exclusion. In August, the Burundian Association for the Defence of Prisoners' Rights (ABDP) published a report on torture covering the period between 1999 and 2001. It is also making arrangements for a seminar to assess how the code of criminal procedure is being enforced. In December, OHCHRB arranged celebrations for the fifty-third anniversary of the Universal Declaration of Human Rights. Ceremonies to mark the occasion were held under the patronage of the new Vice-President of the Republic, Domitien Ndayizeye, who affirmed the Government's determination to give effect to all the international human rights instruments. Other promotional activities on the subject of action to combat discrimination, exclusion and intolerance were organized during the month of December, in collaboration with the Minister for Human Rights, Institutional Reform and Relations with the National Assembly and with the coordinating group of human rights associations, in Bujumbura, Ngozi, Gitega, Muyinga and Ruyigi.

III. OBSERVATIONS

82. The climate of insecurity prevailing in Burundi during the Special Rapporteur's stay was such that some of those she met made comparisons with the situation in 1993, at the time of the assassination of President Ndadaye. They fear that similar events may take place and, to avert them, call for immediate negotiations between the Government and the armed groups. This situation, marked by periods of considerable violence followed by interludes of calm, has an adverse impact on the economy and the social situation of the population groups in Burundi.

83. In addition, the question of "genocide" in Burundi was a constant element of the conversations the Special Rapporteur held in Bujumbura. Some associations and groups she met consider that the question is associated with a certain concept of impunity and is a source of concern following the establishment of the new Government. These groups and associations, gathered together under the Framework Agreement, hold that the issue of impunity and genocide should be central to the concerns of the United Nations. They seek a strong condemnation of the "ethnicization" of institutions stemming from the Arusha Agreement and consider that a worsening of the situation could lead to disaster. This position is reported to have been upheld during a forum held in Kigali at the end of November 2001. The principal argument is the constant reference to the report of the international commission of inquiry which worked in

Burundi in 1996 (S/1996/682). They are opposed to the Arusha Agreement and the institutions arising from it, including the special protection force composed of South African soldiers. Other associations, on the other hand, fear that the "genocide" issue may be manipulated by extremist groups.

84. Much of the population and the armed groups appear to distrust the Arusha Agreement, which will be considered credible and fully accepted only if it is accompanied by peace and justice. It was noted, however, that members of the Government had embarked on a tour of the country for the purpose of explaining the political situation in Burundi and championing the peace process among the population. The Minister of Defence, with whom the Special Rapporteur held talks, considers that it is incumbent on the Government to conduct negotiations at the political level. If the army is authorized to do so by the Government, it can subsequently initiate negotiations with the armed groups, on technical issues. However, the Minister considers that the groups are in no hurry to negotiate, and preferring for the moment to pursue the logic of war.

85. One of the major obstacles to the peace process seems to be the uncertainty surrounding the demands of the rebel groups and the assessment of their real motivations. But in order to improve the human rights situation and safeguard human life, there is an urgent need to begin negotiations for an effective ceasefire, or at least a cessation of hostilities. An invitation should then be issued to all the wings of the armed movements to enhance the chances of success in this area.

86. The evolution of the political situation is marked by a number of events which may be regarded as positive, such as the adoption of the transitional constitution and the installation of a Government composed of all the signatories to the Arusha Agreement but one, which marks a remarkable step forward for women and features a minister responsible for good governance and privatization. However, the armed groups PALIPEHUTU-FNL and CNDD-FDD still refuse to conduct negotiations and to endorse the two members of the new Government claiming to represent them. Many Burundians are disappointed by the period following the establishment of the new Government: they consider that the language of the authorities does not reflect reality. The real change would be the establishment of peace, but if the upsurge of violence continues, all the progress made to date will be compromised.

87. Among progress made, one might mention the return of the CSA to Bujumbura, the establishment of the international commission to study issues relating to prisoners and the holding of the Geneva conference, with very promising results, in December 2001. However, the security situation remains extremely worrying, and violent fighting with heavy weapons continues in Bujumbura-rural and in the east of the country between the army and rebel groups, in which the movements appear to have merged, to judge by the joint statement issued a few days before the Special Rapporteur's mission. The upsurge in violence is no doubt due to the fact that the armed groups wish to enter negotiations in a strong position, or else to prevent the scheduled return of refugees, who are claimed to constitute their rearguard. The security situation has also deteriorated as a result of an increase in murders and other crime.

88. All the signs are that the peace which, it was hoped, would become established after the signature of the Arusha Agreement, and above all its application, will not be a reality immediately, or even soon. The essential factor is the participation of the armed groups, and the idea put forward by some of those consulted by the Special Rapporteur that the negotiations should be entrusted solely to elements which are close to the armed groups might not be beneficial. The rebels are reported to have expressed a wish to negotiate only with the military, who they see as the true wielders of power. Sanctions against the rebels would have equally little impact, and might in fact lead to a hardening in the position of the armed groups.

89. It might perhaps be interesting to introduce a cumulative approach to the achievements in the talks and a method for adjusting and harmonizing the mediation effort by emphasizing very thorough technical preparations. Some consider that the armed groups are ready to end the war, but on condition that their dignity is respected. The Government too has stated many times its resolve to pursue the negotiations. What then remains to be done to ensure that the process is concluded and a definitive peace established? The solution is no doubt to be found in the hands of the people of Burundi. The international community can only help them to reach that goal. In this effort, frankness, truthfulness and awareness of the primacy of the general interest, rather than that of each individual or each group, are vital. As of now, it might perhaps be desirable, in order to promote a calm atmosphere for negotiations, for the warring parties to avoid mutual denigration and concentrate on what unites them - the fact that they all belong to the land of Burundi and everything associated with it. This is a treasure they must safeguard at all costs, for the sake of future generations and of history.

90. The new Government has inherited a "self-defence" programme which is supposed to train civilians to defend themselves against rebel attacks. This programme includes militias (*gardiens de la paix*) of two types: rural patrols, most of whose members are Hutus, and urban civilian patrols composed of Hutus and Tutsis, depending on the neighbourhoods in which they operate. From the start of the programme onwards, some of these militias are alleged to have committed serious human rights violations, in particular murders and rapes, and to have injured civilians.[18] In some cases, a number of them, after refusing to obey orders, are said to have been punished themselves, sometimes by means of summary executions. Many of them are said to have been forced, under threat of punishment, to serve for unspecified periods. Nor were they paid regularly. During her visit to the interior, the Special Rapporteur saw a number of them bearing rifles and guarding checkpoints, with no special uniform or other distinctive markings. Their activities were not governed by any specific regulations. It is claimed that most of the alleged perpetrators of acts of extortion have never been prosecuted and have never had to answer for the abuses they have committed.

91. The rural and urban militias are reported to have participated in the programme for many reasons: fear of punishment by administrative or military chiefs or fear of reprisals on the part of the rebels, a wish to protect their families against rebel attacks or to take revenge for earlier attacks, or a wish to continue abusing civilians once they have become accustomed to bearing and using weapons. The authorities are said to have stated that these personnel were civilians and hence subject to civil laws. In fact, these fighters are reported to be trained and armed by the army and to operate under the orders and the protection of military personnel. By virtue of the fact that they play a direct role in the civil war hostilities as auxiliaries to the regular armed

forces, these militias are also subject to international humanitarian law. Burundi is a party to the Geneva Conventions of 12 August 1949 and the additional protocol relating to the protection of victims of non-international armed conflicts (Protocol II). In this war, all the parties have made use of children, in particular for fighting; under cover of "civilian self-defence", the Burundian authorities have allowed children to enrol in the militias and similar urban groups, or in some cases have forced them to do so.[19] This is a breach of Protocol II to the Geneva Conventions and the Convention on the Rights of the Child.

92. In a note prepared for the Minister of Defence concerning human rights violations alleged to have been committed by the military, the military authorities list the alleged violations, namely murders and "to a lesser extent" rapes, adding that they are on the decline. Slaughter in the form of reprisals, large-scale destruction accompanied by looting, the recruiting of child soldiers and provision of support for the militias are also mentioned. This note does not deny that military personnel are responsible for such violations, but adds that the perpetrators are arrested and taken to court when evidence supporting the charge and other material has been gathered. Concerning the recruitment of child soldiers, the note states that the minimum age for recruitment into the army was raised by the Minister two years ago from 16 to 18. However, the military authorities acknowledge that misrepresentation of ages may exist, prompted by poverty and facilitated by the fact that the rebels have destroyed civil registry records. A commission is to be established to halt such abuses. The note also states that, as the young militia members are ex-members of the rebel forces, their former friends and their accomplices automatically criticize them and generalize on the basis of offences any of them commits, solely out of jealousy, because the pool of recruits is being reduced. The Minister of Defence has stated that a series of steps are to be taken to prevent all such violations and punish their perpetrators.

93. Thanks to efforts by all concerned, including Ministers, to raise awareness of improper intervention by military personnel in the judicial process, it would seem that the number of arrests in military camps has fallen. But many abuses continue, and if real progress is to be made in this area, the measures taken, in particular those relating to international standards, must be publicized and respected by all, especially the military. As a result of support from OHCDHB and the international community, as well as the efforts of the Government and non-governmental organizations, the application of the Code of Criminal Procedure and prison conditions continue to improve. However, the Special Rapporteur's visit to Rumonge and the various conversations she held revealed persistent irregularities and obstacles to the proper administration of justice.

94. It is true that some believe the legitimacy of the new Government could be compromised by the fact that its membership is not the outcome of a democratic process; some members are said not to be sufficiently representative of the population or of the armed groups which continue to fight in the field. Moreover, the Arusha Agreement which underpins this Government is full of reservations, with the risk of harming its credibility in the future. Hence the Government will face the arduous task of convincing the population by means of practical actions. The presence of a larger number of women in the Government is noteworthy and points to a genuine determination to make an effective contribution to enhancing the status of women. Even if some people challenge the new Government's representativeness to some extent, it enjoys the advantage of being a government seeking openness, composed of moderate forces, and one

which enjoys the support of the international community reaffirmed many times, notably at the Geneva conference in December 2001. This increases its room for manoeuvre and should enable it to develop an effective policy on human rights, including the rights of women and children, as well as greater democratization of political life, based on broader participation by the population in political decision-making, irrespective of ethnic, social, regional or religious factors or gender. This is the challenge it must meet after the challenge of establishing peace, and the one will be the precondition for the other.

95. The adoption of the new constitution and the establishment of transitional institutions, such as the National Assembly and the Senate, constitute notable steps forward in the peace process. The ombudsman provided for in the Arusha Agreement will be brought in after the period of transition and will deal first and foremost with the concerns of citizens in administrative matters, and the protection of human rights. The task of establishing local and regional institutions will remain to be carried out. Regarding the law on temporary immunity, problems arise as to the possible legal protection of refugees. The same applies to ex-combatants from the armed groups, for whom it appears that no legislative arrangements have been made.

96. As regards the promotion of human rights and the strengthening of the rule of law, in addition to monitoring, training and seminars in this area, the most significant development is the establishment of a framework for coordination among associations and non-governmental organizations operating in the field of human rights. However, it is too early to categorize the recent establishment of the Rassemblement National des Femmes Burundaises (RANAFEBU) as a move towards the promotion of human rights.

97. The activities carried out to date by OHCDHB are appreciated because they have created awareness among the population, as well as the political, military and judicial authorities, of the need for greater respect for human rights. Monitoring activities are regarded as a mark of protection, reassuring victims as to the existence of their rights and the machinery available to them to secure respect for those rights. Those in the judicial sector state that it has benefited from the presence of OHCDHB. Human rights training and promises to oversee human rights associations are viewed as possible steps towards the creation of a responsible civil society. However, there is a desire for the strengthening of OHCDHB's activities in certain areas such as protection of the rights of refugees and displaced persons, training in order to create awareness of respect for their rights, support for the peace process (in particular regarding the commissions set up under the Arusha Agreement and technical assistance to CSA in the human rights field), promotion of awareness of good governance and democracy, and strengthening of partnerships with local and international non-governmental organizations.

98. Where United Nations agencies are concerned, OHCDHB should play a leadership role in all matters relating to human rights. It should give shape to its role by means of a permanent commitment within the United Nations system in Burundi by developing a framework for continuous cooperation, in particular in a thematic group on human rights, while strengthening the current individual instances of cooperation. It should also expand human rights training for the staff of agencies of the United Nations system in Burundi. It should provide more information on its activities and organize briefings for heads of missions and agencies.

IV. RECOMMENDATIONS

99. In order to make a contribution to enhancing human rights in Burundi, the Special Rapporteur reiterates the recommendations set out in her interim report to the United Nations General Assembly (A/56/479, paras. 138-157) and sets forth new recommendations addressed to the parties to the conflict in Burundi, the Burundian authorities and the international community.

A. To the parties to the conflict

100. The Special Rapporteur commends the mediators on the progress made in the peace process, particularly the establishment of some of the institutions provided for in the Arusha Agreement, and encourages them to continue their efforts to bring still recalcitrant groups to the negotiating table in order to achieve a negotiated solution to the conflict.

101. The Special Rapporteur calls on the armed groups and the Government to respect human rights and international humanitarian law and to halt all violence against the civilian population.

102. Since peace is the deepest aspiration of the people of Burundi, the Special Rapporteur urges all the warring parties to overcome selfishness based on individual or group interests and consider only that which is important in the eyes of national and international opinion, namely the need to safeguard the interests of the people of Burundi.

103. She recommends to the warring parties that they should favour the path of negotiation, since experience in this conflict and many others throughout the world shows that only issues placed on the negotiating table can be addressed.

104. The Special Rapporteur requests the armed groups (CNDD-FDD and PALIPEHUTU-FNL) to abandon their present attitude and demonstrate their willingness to negotiate by halting hostilities immediately in order to join the peace process. This would give credibility to their claim of attachment to the people of Burundi and their welfare.

105. She urges the Government to continue to display its willingness to negotiate, by encouraging the establishment of an atmosphere of calm.

106. She calls on the warring parties to abandon the logic of war by ceasing to encourage the arming of civilians, especially young people, and ceasing to denigrate one another.

107. The Special Rapporteur calls on all the warring parties to do everything in their power to avoid involving children in the conflict. The children of Burundi have a right to a childhood, just like the other children of the world, and nothing and no one may, under whatever pretext, deprive them of it by using them as soldiers or for other tasks associated with this war.

B. To the Burundian authorities

108. The Special Rapporteur welcomes the establishment of the transitional institutions, in particular the Government and the parliament. She supports the measures taken to promote greater democratization, especially the appointment of three women to the Government and the establishment of a ministry responsible for the campaign against HIV/AIDS.

109. The Special Rapporteur calls on the Government and the international community to implement the Arusha Agreement speedily and effectively, which will enable human rights in Burundi to be enhanced.

110. The Special Rapporteur also calls on the Government to establish conditions conducive to the return of refugees, and requests the international community to support it in its efforts to do so.

111. The Special Rapporteur also calls on the Burundian authorities to take vigorous steps to put an end to the practice of torture, especially in the *cachots* and military camps. Such acts are to be condemned, and should be punished by the military and civil courts.

112. She recommends that the Government should cease the recruitment of militias and the programme of "civilian self-defence". She calls on it to demobilize and disarm the militias and other self-defence forces and to entrust full responsibility for protection of the public to military and police forces properly constituted using regular recruitment procedures, following a clear chain of command as well as regulations which are in the public domain and provisions whereby those committing abuses will be held to account.

113. The Special Rapporteur endorses the Government's decision to ban recruitment of young people under 18 into the army, but urges it to take all necessary steps to ensure that this measure is effectively implemented, and that all forms of training and use of children under 18 in military activities cease immediately, especially in militias and other civilian self-defence forces.

114. She calls on the Government to demobilize all children used in the regular and paramilitary forces, and to respond to their material, psychological, social and training needs. She urges the Government to accede without reservations to the optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and to sign and ratify the African Charter on the Rights and Welfare of the Child.

115. She commends the Government and political parties on their efforts to promote the integration of women in political bodies, and encourages them to continue to provide support for the advancement of women by extending their efforts to future institutions, and to all decision-making bodies.

C. To the international community

116. The Special Rapporteur thanks the international community, and in particular the States of the region, for the tireless support they have provided to the facilitation efforts conducted by President Bongo and Vice-President Zuma to bring the armed groups to the negotiating table.

117. She supports the United Nations Secretary-General, his Special Representative for the Great Lakes Region, the United Nations High Commissioner for Human Rights and all United Nations agencies in their work to promote peace and human rights in Burundi.

118. The Special Rapporteur encourages the strengthening of cooperation among States in the subregion in order to improve the chances of lasting peace.

119. She appeals to donors to continue to support humanitarian assistance and development assistance and to do their utmost to speedily honour the commitments made at the conferences in Paris (2000) and Geneva (2001), in particular as regards efforts to combat HIV/AIDS, priority development programmes and human rights.

120. The Special Rapporteur calls for special attention to be given to the fight against poverty, to sustainable development, to the strengthening of the capabilities of civil society, to the development of democracy and to the promotion and protection of women's rights.

121. She invites the international community to increase its support for activities in the field of human rights monitoring, the strengthening of the justice system and the rule of law, and all promotion, prevention and protection activities in relation to human rights, which are vital for the consolidation of peace.

122. She encourages all humanitarian personnel, including the members of United Nations agencies and programmes, to incorporate human rights in their activities and to work in close cooperation with OHCHR in Burundi.

123. She recommends that the Government of Burundi should be provided with assistance in demobilizing all the paramilitary auxiliary forces, particularly in connection with the resources needed to meet the material, psychosocial and educational needs of children under 18 who have served in the regular or paramilitary forces.

Notes

[1] *Source*: Ministry of Defence: *Bilan et dégats causés par les rebelles*, 7 December 2001.

[2] *Source*: Contribution by the ITEKA League to the Special Rapporteur's report on Burundi, December 2001.

[3] Human Rights Watch: *Rapport anticipé de décembre 2001*, vol. 13, note 7 (A), p. 12.

[4] UNICEF figures, cited by OCHA in an OCHA report, December 2001.

[5] See note 2 above.

[6] The situation of these displaced persons was described by the Special Rapporteur in her interim report (A/56/479), in particular paragraphs 71-77.

[7] Arrivals up to November 2001 totalled around 6,000 persons, including 120 during the last week.

[8] See note 2 above.

[9] The movements are signatories to the Framework Agreement.

[10] *Source*: OHCDHB, 2001.

[11] The Special Rapporteur has used the terms appearing in the correspondence sent to her.

[12] A traditional Burundian institution entrusted with conflict mediation and justice.

[13] *Source*: National Plan of Action to Combat HIV/AIDS (2002-2006), preparatory document for the Geneva conference, 6 and 7 December 2001, Government of Burundi.

[14] Figures provided by the ITEKA League relating to sick persons who suffered violations of the right to health. See note 2 above.

[15] The scale of charges for medical treatment applied in Burundi is governed by a ministerial ordinance of 1991.

[16] An inventory of these organizations was carried out under a UNDP project financed by the European Union with a view to providing them with the required support.

[17] There are 125 domestic courts which handle 80 per cent of cases. They have 573 low-level judges with elementary law training who receive nominal salaries.

[18] In its December 2001 report entitled *Protéger le peuple: programme gouvernemental d'autodéfense au Burundi*, Human Rights Watch provides a very detailed and very enlightening study of the :militias in Burundi.

[19] In her report to the General Assembly (A/56/479, paras. 12 and 13), the Special Rapporteur explained how she had personally attended a military training session for young civilians, some of whom were undoubtedly under 18 years of age.

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